



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

July 13, 1990

Ms. Shannon J. Kilgore
Assistant Attorney General
Environmental Protection Division
P. O. Box 12548
Austin, Texas 78711-2548

OR90-335

Dear Ms. Kilgore:

By letter of March 23, 1990, you forwarded to me copies of correspondence between Mr. Dan Roberts and yourself. He has requested documents from litigation files of the Environmental Protection Division of this office under the Texas Open Records Act. His request, with attached copies of his other letters and your letters to his attorney, was assigned ID# 8757.

He requests three items. The first one is as follows:

Either computer or paper files regarding all litigation or pending litigation being pursued against "Water Utilities" in the State of Texas.

You provided Mr. Robert's attorney with a list of the approximately 100 pending drinking water enforcement cases handled by your division, and requested that Mr. Roberts identify the files he would like to see. You stated that the files are in active use, and that before he could view them, it was necessary to remove privileged material. Accordingly, you stated that you needed to set a date for his inspection of particular files. Section 4 of the Open Records Act permits this kind of response to a request for information which is in active use. See Attorney General Opinion H-483 (1974); Open Records Decision No. 57 (1974).

He next requests the following information:

All information regarding litigation or pending litigation against Dan Roberts and/or Dan Roberts Water System.

Where litigation is pending or reasonably contemplated, section 3(a)(3) of the Open Records Act excepts information related to the lawsuit from disclosure. See Open Records Decision No. 551 (1990). However, the state may waive the protection of section 3(a)(3) with respect to information related to litigation. Open Records Decision No. 363 (1983). Attorney work-product information in your file is confidential under section 3(a)(1) of the Open Records Act. See Open Records Decision No. 462 (1987), at 10.

The third item he requested is as follows:

All information (statutory or otherwise) regarding the basis for the State of Texas' claim of jurisdiction over a.) unincorporated privately owned water systems, and b.) incorporated water systems.

The Open Records Act does not require you to do research in order to answer questions such as these. See Open Records Decisions No. 243 (1980); 87 (1975). It appears that your responses to Mr. Robert's requests for records have been consistent with the requirements of the Open Record Act.

I hope this information will be helpful. If you have any questions, please refer to OR90-335.

Yours very truly,



Susan Garrison
Assistant Attorney General
Opinion Committee

SG/le

Ref.: ID# 8757, 9033, 9349

Enclosure: Attorney General Opinion H-483; Open Records
Decision Nos. 551, 462, 363, 243, 87

cc: Edward Phillips
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Dan Roberts
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